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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/729,777	12/06/2000	Haruaki Eto	396.39350X00	7717

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EXAMINER

AHMED, SHEEBA

ART UNIT	PAPER NUMBER
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1773

DATE MAILED: 12/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

**Application No.**

09/729,777

**Applicant(s)**

ETO ET AL.

**Examiner**

Sheeba Ahmed

**Art Unit**

1773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 9-14, 16-20 and 23-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 9-14, 16, 18-20, 23-25, and 27-28 is/are rejected.
- 7) ☐ Claim(s) 17 and 26 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## DETAILED ACTION

### *Response to Amendment*

1. Claims 15, 21, and 22 have been cancelled in the above-identified application. New claims 23-28 have been added. **Claims 9-14, 16-20, and 23-28 are now pending.**

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 9-11, 18-20, 23-25, 27, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mckeady (WO 95/13135) in view of Otsuka et al. (US 4,579,223) and Applicant's own admission.

Mckeady discloses an oxygen-absorbing composition contained in an envelope of spun-bonded polyolefin wherein the composition comprises a 100 to 325 mesh particulate annealed electrolytically reduced iron in an amount up to 63% by weight (See Abstract). The envelope is a spun-bonded polyolefin known by the trade name TYVEK and inherently meets the limitation that the package is air-permeable packaging material (*given that spun-bonded polyolefin known by the trade name TYVEK is gas permeable*) (See Page 4, lines 28-30). The electrolyte to activate the iron is present in an amount between about 1 and 2% (Page 5, lines 28-35). Example 4 shows that the composition may comprise 0.34 grams of 100 mesh electrolytically reduced iron and no

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other iron particles (*thus meeting the limitation that the amount of iron passable through a 200-mesh sieve is less than 5% by weight*). On the other hand, Otsuka et al. disclose an oxygen absorbent package comprising a gas permeable outer material layer and iron powder as the oxygen absorbent (Column 1, lines 1-15 and Column 2, lines 44-47) wherein the packet is manufactured according to a three side-sealing method which increases the water resistance of the packet and reduces the tendency of the inner and outer material layers to peel or separate (Column 5, lines 30-55). A three-side sealing automatic filling and packing machine or other means may be used to do this (Column 7, lines 3-6).

McKeady and Otsuka et al. do not state that the oxygen absorbent packages may be manufactured using a three-sided automatic filling machine in a high productivity of at least several hundred to 1000 or more packages per minute.

However, the Applicants admit on lines 12-24 of Page 8 of the instant Specification that it is known to make oxygen absorbing packages using a three-sides automatic filling machine wherein machines of this type can produce several hundred to 1,000 or more packages per minute.

Accordingly, it would have been obvious to use a three-side sealing automatic filling and packing machine given that Otsuka et al. teach that doing so increases the water resistance of the packet and reduces the tendency of the inner and outer material layers to peel or separate and the Applicants admit that machines of this type can produce several hundred to 1,000 or more packages per minute.

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3. Claims 12-14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKeady (WO 95/13135) in view of Otsuka et al. (US 4,579,223), Applicants own admission and Cerbo (US 3,969,224).

McKeady and Otsuka et al., as discussed above, do not state that the smaller particle size iron powder is removed and is specifically removed by a separation method utilizing centrifugal force.

However, Cerbo discloses a method of separating different size particles wherein the method is thoroughly reliable in operation (Column 1, lines 61-68). The method utilizes a receptacle at a speed that centrifugally projects the particles therefrom and the particles are projected over different distances proportional to their masses (Column 2, lines 3-9) The particles range in size from 80 mesh to 325 mesh (Column 3, lines 2-6).

Accordingly, it would have been obvious to one having ordinary skill in the art to remove the smaller particles from the composition disclosed by McKeady and Otsuka using the method taught by Cerbo given that such a method is thoroughly reliable in operation.

***Allowable Subject Matter***

4. Claims 17 and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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***Response to Arguments***

5. Applicant's arguments with respect to claims 9-14, 16, and 18-20 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sheeba Ahmed whose telephone number is (703)305-0594. The examiner can normally be reached on Mondays and Thursdays from 8am to 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Thibodeau can be reached on (703)308-2367. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-5408 for regular communications and (703)305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)306-5665.

  
Sheeba Ahmed  
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December 11, 2003